



Surveillance and Crime: key approaches to Criminology

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This short book of 213 pages includes eight chapters, a glossary, a bibliography and an index. Chapter 1 introduces surveillance as social issues and the kinds of problems this gives rise to. Chapter 2 gives an overview of the main theoretical perspectives on surveillance and their differing conceptual orientations. Chapter 3, titled, the historical foundations of surveillance, gives an overview of the historical foundations and processes that have shaped both the practices of surveillance and the meanings attributed to crime. Chapter 4, titled, new policing and new surveillance, is a critical examination of the emerging risk paradigm in the plural policing literature. Chapter 5, titled, globalisation, surveillance and the war on terror, is an historical overview of the relationship between terrorism and surveillance; the integration of discrete surveillance systems and surveillance methods introduced to prevent terrorism. Chapter 6, titled, surveillance, power and social impacts, is an introduction and overview of the social impacts of surveillance. Chapter 7, titled, contesting and resisting surveillance, explores the scope and meaning of resistance and contestation in relation to surveillance. Chapter 8, the final chapter, is titled, deconstructing surveillance, crime and power.

Police Surveillance

Let us examine surveillance in the UK and what it means with regard to court cases where people's liberties are at risk. We must remember that a significant case about covert surveillance went to Brussels after the case *R v Khan* [1997] AC 558. Khan had arrived from Pakistan at Manchester airport on the same flight as his cousin Nawab. When stopped and searched, no drugs were found on Khan who made no admissions on interview and was released without charge. Later Khan was in Sheffield, at the home of a man named Bashforth. Police installed a listening device outside. Neither Khan nor Bashforth were aware of its presence. The police obtained a tape recording of a conversation. In the course of the conversation, Khan made statements which amounted to an admission that he was a party to the importation of drugs by Nawab. Nawab had admitted importing drugs and had been found guilty in court. This case raised issues of whether the evidence was admissible and if admissible, whether it should have been excluded by the judge in the exercise of his discretion under common law or S.78 PACE 1984. However, the judge admitted the intercept evidence and Khan was re-arrested and pleaded guilty to being knowingly concerned in the fraudulent evasion of the prohibition on the importation of heroin. The Court of Appeal dismissed his appeal. Khan took his case to the European Court of Human Rights¹. The ECtHR held that the deployment of a covert surveillance device in the absence of a statutory regime constituted a violation of Article 8(2) but the use of the evidence covertly obtained did not constitute a violation of Article 6, the right to a fair trial. This ECtHR decision was again asserted in *Lewis v UK*² (In those days there was no legal framework regulating the installation and use by the police of covert listening devices). In the light of *R v Sang*³, the argument that the

¹ *Khan v UK* [2001] 31 EHRR 45

² (2004) 39 EHRR 9

³ [1980] AC 402

evidence of the taped conversation was inadmissible could only be sustained if two wholly new principles were formulated. Khan enjoyed a right of privacy in respect of the taped conversation. There is no such right of privacy in English law, and even if there were, evidence obtained improperly or even unlawfully remained admissible, subject to the judge's power to exclude it at his discretion. If the circumstances in which the evidence was obtained amounted to an apparent invasion of rights of privacy under article 8, that was accordingly something to which the court must have regard. As early as 1891, the US Court articulated this concept in *Union Pacific Railway Co. v Botsford*⁴. In holding that a court could not compel a plaintiff in a civil action to submit to a surgical examination, the Court declared the sanctity of the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.

Privacy elsewhere

As to interception of communication with regard to the home, the US courts have always treated this as a breach of privacy. As early as 1886, in *Boyd v. United States*⁵, the US Court strictly protected the sanctity of a man's home. The maxim that the US home is a US person's castle appeared as early as 1499. The first recorded case in which this notion was mentioned was *Semayne's Case*⁶. In the eighteenth century, William Blackstone declared that the law has "*so particular and tender a regard to the immunity of a man's house that it stiles it his castle, and will never suffer it to be violated with impunity.*"⁷ However, today's Information Age often involves exchanging information with third parties, such as phone companies, internet service providers, cable companies, retailers, and so on. And so, clinging to the ancient notion of privacy as related in the previous paragraph would mean the practical extinction of privacy in today's world. In contrast to the notion of privacy as secrecy, privacy can be understood as an expectation in a certain degree of accessibility of information.

Biometric Technologies

Biometric technologies are changing society and the European Commission's Report of February 2007 into the impact of such technologies, concluded that the burgeoning information society brings with it the need for us to be able to securely identify ourselves quickly and remotely and therefore we need the inevitable implementation of biometric technologies to increase national security, and as a tool to help prevent fraud⁸.

⁴ *141 U. S. 250*. The single question presented by this record was whether, in a civil action for an injury to the person, the court, on application of the defendant, and in advance of the trial, may order the plaintiff, without his or her consent, to submit to a surgical examination as to the extent of the injury sued for.

⁵ 389 U.S. 347 (1967) Petitioner was convicted under an indictment charging him with transmitting wagering information by telephone across state lines in violation of 18 U.S.C. 1084.

⁶ 77 Eng. Rep. 194, 195 (K.B. 1604)

⁷ William Blackstone, *Commentaries on the Laws of England* 223 (1769).

⁸ "Privacy & prejudice: whose ID is it anyway?" *New Scientist*, pg 20, 17 September 2005.

Everyday surveillance

At page 145 of *Surveillance and Crime* is a quote from John Gilliom (2006) who said that a tour of the field suggests that there have been many studies addressed to the watchers of people, ie. The police, the myriad of CCTV operators, etc but not many studies have examined those who are the subjects of surveillance. There are many groups resisting surveillance and chapter 7 of this book addresses this topic. To conservatives in society, everything from groups such as *Statewatch; Liberty; Privacy International*; to actual, physical revolutions, and even to hairstyles, has been described as ‘resistance’. The many protest movements around the world, and currently the movement *Occupy Wall Street* are seen as resistance movements. At 12 noon in Bristol, England on 14 October 2011, and in cities around the world, protesters assembled in a central location and attempted to live there for an indefinite period of time. The plan in Bristol, England, was for protesters to occupy College Green in Bristol by camping there for the foreseeable future. The ‘occupation’ began on the 14 October as planned- in solidarity with those campaigning against corporate greed, power and corruption in Wall Street, New York, USA. They did this because they wanted to see a change in the current process of the democratic systems of government. The protest camps that created revolutions across the Arab world, the Spanish indigenous movement, and the occupation of Wall Street inspired the Bristol protest. Their action aimed to create a liminal space to develop political discussion between all members of society. Their aim is to unite people who feel they cannot continue to acquiesce to the current systems and practices of political organisations. They are closely monitored by police in case criminal public order offences emerge (eg. affray⁹, under section 3 Public Order Act 1986).

Non-resistors of surveillance

The non-resistors may include many who are not aware of their surveillance. Many Internet users around the globe may not be aware that the *United States Homeland Security* and other agencies of the United States government regularly request details of Internet users from search engines. For example, Google owners have recently revealed that such requests have increased by a quarter to 5950 requests relating to 11000 Google accounts, from January to July 2011. Usually, such government requests are part of criminal investigations. However, to examine these requests in perspective, the statistical fact that such requests consist of several thousands out of a billion people on the Internet, illustrate that this is not a real civil liberties issue. Many others have learned techniques that keep them out of view of government surveillance. Yet others engage in surveillance of the authorities with the use of cameras or

⁹ Note that spoken words alone do not constitute a s.3 threat, even if made in an aggressive tone of voice. (*R v Robinson* [1993] Crim LR 581).nor is concealing a weapon a threat. There must be threatening circumstances such as brandishing a weapon. The carrying of petrol bombs by gangs are, however a s.3 offence. (*I v DPP, M v DPP. H v DPP* [2001] 2 AER 583).The defendant must have intended to use or threaten violence or have been aware that his conduct may be violent or threatened violence (Section 3 (2) of the Public Order Act 1986).

mobile phones, as was the case that revealed that a police officer was responsible for the death of an innocent man, Ian Tomlinson, caught up in the G-20 London protest on his way home (see page 136). Other non-resistors may be whole groups of innocent citizens monitored without their consent or fooled into agreement to monitor traffic when in fact CCTV was monitoring their behaviours and movements, as was revealed in 2010. (See Paul Lewis, "Police under fire over Muslim CCTV surveillance scheme", *Guardian*, 18 June 2010. The West Midlands Police Authority and Birmingham City Council apologised to residents for illegally installing 169 CCTV cameras, lying that this was to prevent anti-social behaviour and vehicle crime, when in fact, these cameras were to watch these residents' every movement without the need for warrants and without the need to comply with statutes such as the Regulation of Investigatory Powers Act 2000 (c.23) (RIPA), regulating the powers of public bodies to carry out surveillance and investigation, and covering the interception of communications. The residents had reluctantly agreed initially, but continuously continued to complain about their misgivings as to 169 CCTV cameras around these Muslim homes. The initiative, Project Champion, planned to monitor the Muslim neighbourhoods of Washwood Heath and Sparkbrook in Birmingham, West Midlands, using a network of 169 *automatic number plate recognition cameras*. The cameras included dozens of covert cameras secretly installed in the street so that residents can be tracked entering or leaving the area, equivalent to being on house arrest for all these residents who had committed no crime, and police had no court order to have these people under house arrest without their knowledge or consent by misleading the people into agreeing to a vehicle monitoring exercise.

Conclusion

The concluding part of the book echoes the arguments of Loic Wacquant (2009) - that surveillance is never neutral and that criminality is too serious a matter to be left to non-impartial judgements of police and other authorities, calling for further debate on the efficacy of surveillance in respect of social justice, and also on the criminalisation of protest movements.

This book, *Surveillance and Crime*. is an important addition to the UK criminology library. It must be bought and digested before launching into the laws governing surveillance for a full understanding of events.